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No. 93-1260

In The

Supreme Court of the United States

October Term, 1994

United States of America,

Petitioner,

v.

Alfonso Lopez, Jr.,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

MOTION FOR LEAVE TO FILE AN OUT OF TIME BRIEF AMICI CURIAE AND BRIEF FOR THE COALITION TO STOP GUN VIOLENCE, THE EDUCATIONAL FUND TO END HANDGUN VIOLENCE, AND THE COUNCIL OF GREAT CITY SCHOOLS AS AMICI CURIAE SUGGESTING REVERSAL

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The Coalition to Stop Gun Violence, The Educational Fund to End Handgun Violence, and The Council of Great City Schools hereby respectfully move pursuant to rule 30 and 37 of the Supreme Court rules for leave to file the attached brief *Amici Curiae*. The consent of the attorney for the petitioner and the respondent has been obtained.

The interest of the Coalition to Stop Gun Violence in the case arises from the fact that the purposes of the Coalition is to ban the sale of handguns and assault weapons to private individuals. The interest of The Educational Fund to End Handgun Violence arises from their dedication to ending violence caused by the use of fire arms particularly as it effects children. The interest of The Council of Great City Schools is to improve urban education.

In this case, petitioner argues primarily as to the scope of Congress' power to regulate under the Commerce Clause of the United States Constitution. The *Amici Curiae* brief contains a more complete comparison of sections 922(o) and 922(q) of the Act in question than Petitioner's brief. Section 922(o), which regulates machine guns and was upheld by the 8th, 9th and 11th Circuits, was distinguished by the Appellate Court in the instant case. Section 922(q), the statute in question, deals with handguns but is indistinguishable from section 922(o) in relationship to Congress' power to regulate interstate commerce. The *Amici Curiae* brief provides statistical and empirical information that supports both the indistinguishable characteristics of machine guns and handguns, and the effects of guns on interstate commerce. If the argument contained in *Amici Curiae* brief is accepted it would be dispositive of this case.

The *Amici* were unaware of the absence of the argument and supporting facts from petitioner's brief until the petitioner's brief had been filed. An application for extension of time to file a brief *Amici Curiae* had been requested by *Amici* see Appendix A, but denied by the court clerk, see Appendix B. Pursuant to Supreme Court rules 30.4 *Amici* request leave to file their brief out of time.

In the past this Court has approved motions to file out of

time *Amici Curiae* briefs. United States v. Salerno 479 US 1015 (1986); International Union, Automobile Worker v Brock, 475 US 1093, 477 US 279 (1986); American Foreign Ser. Assn v Garfinkel, 489 US 1050 (1989); Mansell v Forbes, 488 US 906 (1988); Booth v Maryland, 479 US 1081 (1987); Johnson v Transportation, 479 US 912 (1986); Arkansas v Oklahoma, 465 US 1018 (1984); City of Newport v Fact Concerts, Inc., 450 US 992 (1981); Goldstein v California, 414 US 883 (1973); United States v Eichman, 495 US 928 (1990); Patterson v McLean Credit Union, 487 US 1231 (1988); Bowsher v Synar, 475 US 1116 (1986); Lemon v Kurtzman, 401 US 931 (1971). The brief amici curiae in the instant case is equally deserving of consideration.

Respectfully submitted

By_____

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DATED: July 11, 1994

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BRIEF FOR THE COALITION TO STOP GUN VIOLENCE, THE EDUCATIONAL FUND TO END HANDGUN VIOLENCE, AND THE COUNCIL OF GREAT CITY SCHOOLS AS AMICI CURIAE IN SUPPORT OF PETITIONER

STATEMENT OF INTEREST: COALITION TO STOP GUN VIOLENCE

The Coalition to Stop Gun Violence is a non-profit organization founded in 1974. Over the last 20 years the Coalition has grown to include over 40 national professional,

religious and civic organizations.

The purpose of the Coalition is to ban the sale of handguns and assault weapons to private individuals. Exceptions would be made for the police and the military, as well as collectors and target shooters willing to leave their guns at a licensed shooting range. While working to ban these weapons, the Coalition supports intermediate legislative steps to reduce gun violence. The Coalition seeks to achieve its goals through lobbying efforts at the local, state and federal level, and through public education materials explaining the dangers of firearms.

The Coalition supports the Gun-Free School Zones Act of 1990. Support for a gun-free environment for our children is a natural corollary of the Coalition's support for a handgun-free environment in general.

STATEMENT OF INTEREST: EDUCATIONAL FUND TO END HANDGUN VIOLENCE

The Educational Fund to End Handgun Violence was founded in 1978 as a non-profit educational charity dedicated to ending violence caused by the use of firearms, particularly as it affects children.

The Educational Fund seeks to achieve this goal through research, scholarship, and educational efforts at increasing the public's understanding of firearms violence. For instance, the Educational Fund works to prevent youth violence by developing community-run public education campaigns, and a study by the Educational Fund, *Kids & Guns*, now in its third edition, details the serious public health problem firearms pose to our youth.

The Educational Fund also operates the Firearms

Litigation Clearinghouse, the most comprehensive library of firearms litigation information in America. The Clearinghouse is instrumental in helping victims of firearms violence and their attorneys hold those responsible for firearms violence accountable.

The Educational Fund believes that the Gun-Free School Zones Act of 1990 as a legitimate means of reducing firearms violence among children.

STATEMENT OF INTEREST: COUNCIL OF GREAT CITY SCHOOLS

The Council of Great City Schools is the primary advocate for public urban education in the nation. We are a non-profit organization whose mission includes: articulating the needs of urban youth; promoting public policy to ensure educational improvement and equitable delivery of comprehensive programs; providing a forum for urban educators and board members to strategize, to exchange ideas and information, and to conduct research; and creating a national focus for urban education in cooperation with other organizations and agencies. The membership of the Council consists of boards of education for forty-seven urban school districts around the country.

Our interest in the Gun-Free School Zones Act of 1990 stems from our concern about the education of children in general, and particularly the education of children in city schools. Urban schools are already suffering from a lack of financial resources, high dropout rates, underachievement, and drugs and violence. Our school districts are working hard to ensure safe educational environments for their students so that effective learning may take place. Congress decided to help schools in this endeavor by outlawing the possession of guns in

and around schools. We believe that all branches of the government should support schools' efforts to protect our country's greatest resources, our children, and hence to increase educational opportunity and achievement.

SUMMARY OF ARGUMENT

In light of the deference that courts have traditionally afforded Congress in legislating under the Commerce Clause, Congress' enactment of the Gun-Free School Zones Act of 1990 should easily pass constitutional muster. This is especially true given the substantial economic effects that gun violence in schools exerts on interstate commerce through lost years of productivity, burdens on our health care system, and the disruption of the education of our children.

Moreover, Congress' power to regulate handgun possession follows logically from previous court decisions validating its power to prohibit the private possession of machineguns. There is no meaningful distinction between handguns and machineguns which would justify different treatment of the two weapons under the Commerce Clause.

ARGUMENT

I. GUN POSSESSION IN SCHOOLS EXERTS A SUBSTANTIAL ECONOMIC EFFECT ON INTERSTATE COMMERCE.

Congress' exercise of the commerce power is considered valid if there is any rational basis for its finding that the activity it seeks to regulate substantially affects interstate commerce. *Hodel v. Virginia Surface Mining and Reclamation Association, Inc.*, 452 U.S. 264, 276 (1981). This standard reflects the

deference that courts have traditionally afforded Congress in this area; indeed, as the lower court notes, no Supreme Court decision in the last half century has set aside such a finding as without rational basis. *United States v. Lopez*, 2 F.3d 1342, 1363 n.43 (5th Cir. 1993), *cert. granted*, 62 U.S.L.W. 39 (U.S. Apr. 19, 1994)(No. 93-1260). In fact, this Court has not required Congress to make formal findings in order to legislate, as long as it properly could have found that the activity it seeks to regulate substantially affects interstate commerce. *Perez v. United States*, 402 U.S. 146, 156 (1971); *Katzenbach v. McClung*, 379 U.S. 294, 299 (1964).

Congress may regulate an activity, even when the individual instances of that activity are local, so long as the class of activities regulated exerts a substantial economic effect on interstate commerce. *Wickard v. Filburn*, 317 U.S. 111, 125, 127 (1942). Thus, activities such as an individual's production of wheat for his own consumption (*Wickard*), or a single loan shark's attempt to collect on a debt (*Perez*) may be reached by Congress because of the aggregate effect that such activites have on interstate commerce.

Moreover, the activity being regulated need not have a direct effect on the national market for a certain good. Although the Court in *Wickard* upheld the wheat marketing quota provisions of the Agricultural Adjustment Act because of their importance in ensuring a stable price for wheat, the Court simply stated that "[the] activity,... *whatever its nature*, [may] be reached by Congress if it exerts a substantial economic effect on interstate commerce and this is irrespective of whether such effect is...'direct' or 'indirect.' *Id.* at 125 (emphasis added). Likewise, the Court in *Perez* did not base its decision on the effect of loan sharking on the national market for credit. Indeed, the presence of loan sharks does not affect the demand for credit in the national market, as it is typically a source of

last resort for those who have already attempted to borrow from legitimate channels. Instead, the Court in *Perez* vindicated Congress' power to regulate under the Commerce Clause by referring to the importance of loan sharking in financing organized crime, which operates on a national scale. *Perez*, 402 U.S. at 157.

Similarly, even if gun possession in schools is a local activity, when considered in the aggregate it is a national problem with nationwide repercussions. Thus, in light of the foregoing precedents, Congress' enactment of the Gun-Free School Zones Act should easily pass consitutional muster.

The devastating impact of guns on school-age children has been well documented. According to a Northeastern University study, from 1985-1990, the number of teenagers murdered by firearms doubled. GLENN L. PIERCE & JAMES A. FOX, RECENT TRENDS IN VIOLENT CRIME: A CLOSER LOOK 2-3 (1992). When combined with the number of deaths and injuries caused by suicides and accidents, the number of gun casualties among children is staggering. In 1990, nearly 5,000 children under the age of 19 were killed by gun violence--13 each day--and scores more were injured. Lois A. Fingerhut et al., *Firearm Mortality Among Children, Youth, and Young Adults 1-34 Years of Age, Trends and Current Status: United States, 1985-1990*, 231 ADVANCE DATA FROM VITAL AND HEALTH STAT. (Nat'l Center for Health Stat., Hyattsville, Md.) 12 (1993).

Unfortunately, schools do not provide a safe haven from this violence. According to the U.S. Department of Justice's National Crime Survey, about the same number of violent crimes against teenagers--approximately 500,000 each year--occur in a school building or on school property as on the street. *Annual Study Shows 3 Million Crimes on School Campuses*, SCH. SAFETY UPDATE (Nat'l Sch. Safety Center, Westlake Village, CA.) Oct. 1991, at 1. In fact, a statewide survey taken

in Illinois during the 1989-90 school year found that 44% of the students and one-fourth of the teachers surveyed indicated that their school was either *less safe or as unsafe* as the neighborhood it was in. ILLINOIS CRIMINAL JUSTICE INFORMATION AUTHORITY, TRENDS AND ISSUES 91 (1991).

Many children mistakenly believe that carrying a gun to school will protect them from this violence. According to the Centers for Disease Control, 1 in 20 high school students has carried a gun to school at least once in the past month. *Weapon-Carrying Among High School Students*, CDC MORBIDITY AND MORTALITY WKLY. REP. (CDC, Atlanta, Ga.), Oct. 11, 1991.

Children carrying guns to school is a national phenomenon, suitable for national regulation. Seven percent of New York City public high school students carry a handgun to school at least once a month, NATIONAL SCHOOL SAFETY CENTER, SCHOOL CRIME AND VIOLENCE STATISTICAL REVIEW 4 (1994), 6.6% of 11th-graders in Seattle public schools have carried a handgun to school, Charles M. Callahan & Frederick P. Rivara, *Urban High School Youth and Handguns*, 267 JAMA 3038, 3040 (1992), and 5.3% of Illinois public high school students have done so. *Annual Study Shows 3 Million Crimes on School Campuses*, *supra*, at 2. Moreover, according to Texas A&M researcher Paul Kingery, rural students are twice as likely to carry handguns to class than the national average. Donna Harrington-Leuker, *Blown Away*, THE AM. SCH. BOARD J., May 1992, at 21.

However, rather than protecting the children who carry them, guns are a grave danger to both the carriers and their fellow students. According to conservative estimates abstracted from newspaper accounts, from September 1986 to September 1990, guns in school caused 71 deaths, 201 severe woundings, and 242 hostage situations. SCHOOL CRIME AND VIOLENCE

STATISTICAL REVIEW, *supra,* at 9. Overall, shootings or hostage situations in schools have occurred in at least 35 states and the District of Columbia. *Id.*

The economic cost of these firearm injuries is substantial. According to a University of California at San Francisco study, the average cost of a firearm fatality is approximately $374,000. Wendy Max & Dorothy P. Rice, *Shooting in the Dark: Estimating the Cost of Firearm Injuries*, HEALTH AFFAIRS, Winter 1993, at 171, 177. Considering that the bulk of this cost stems from lost years of productivity, the cost of firearm fatalities among school-age children is likely to be much higher. Even firearm injuries which require only hospitalization have an average cost of $33,000. *Id.* Thus, it is reasonable to conclude that gun possession in schools has a substantial economic effect on interstate commerce.

Such a finding would not be without precedent. Indeed, the Ninth Circuit in *United States v. Evans* used general statistics documenting the number of firearm fatalities since the turn of the century to uphold a federal ban on the private possession of machine guns. *United States v. Evans,* 928 F.2d 858, 862 (9th Cir. 1991). After quoting the firearm death toll, the court found that "it was thus reasonable for Congress to conclude that the possession of firearms affects the national economy, if only through the insurance industry." *Id.*

Guns in school pose a danger to students even when they are not fired. In California, one of only two states legally mandated to keep records about criminal incidents in schools, there were 1,830 armed assaults on campus during the 1988-89 school year. *Annual Study Shows 3 Million Crimes on School Campuses, supra,* at 2. This 25% increase from the previous year was fueled by a 40% increase in the prevalence of guns on campus. *Id.*

The terror caused by guns in schools endangers the

education of our youth. According to a national survey distributed by the National Association of Secondary School Principals, 37% of sixth through twelfth-graders don't feel safe in school; not surprisingly, 63% of students said they would learn more if they felt safer. SCHOOL CRIME AND VIOLENCE STATISTICAL REVIEW, *supra,* at 3. Even according to a poll commissioned by the National Rifle Association, 20% of parents surveyed said their children had expressed concerns about the presence of guns in their schools. *Id.* at 5. Alarmingly, a poll released by the Harvard School of Public Health in conjunction with the Joyce Foundation in Chicago reported that 35% of sixth through twelfth graders, in suburban, rural and urban schools, both public and private, believe that it is likely that their life will be cut short by gunfire. Mary Jordan, *Summit Searches for Cease-Fire in Violence Enveloping Children,* WASH. POST, July 22, 1993, at A3. These statistics indicate that the presence of guns in schools is distracting children from the important developmental tasks on which they should be focusing.

Gun possession in schools exerts a real impact on our students' productivity. Not only do students learn less when they are in school, but many actually drop out because of the threats to their safety. In 1992, 6% of all dropouts between the tenth and twelfth grades reported feeling unsafe at school as their reason for dropping out of school. THE NATIONAL EDUCATION GOALS PANEL, THE NATIONAL EDUCATION GOALS REPORT: BUILDING A NATION OF LEARNERS 163 (1993). Although guns alone cannot be blamed for the high drop-out rates in our nation's high schools, they are a contributing factor, and no one can deny the impact of dropouts on our economy.

For example, if the graduation rate for a group of 47 city schools--the Great City Schools, urban schools which are especially wracked by the problems of gun violence--equaled

the national average, the federal tax on the lifetime earnings of these graduates would yield enough money to double the present appropriation for elementary and secondary education, increase federal AIDS research five-fold, or boost drug prevention efforts by a factor of ten. COUNCIL OF THE GREAT CITY SCHOOLS, RESULTS 2000: PROGRESS IN MEETING URBAN EDUCATION GOALS 10-11 (1990).

Given the economic costs of gun violence in lost years of productivity, burdens on our health care system, and the disruption of our children's education, there is unquestionably a rational basis for Congress' regulation of guns in schools. This conclusion follows inexorably from the decisions of this court authorizing congressional regulation of activities, whether local or in commerce, which exert a substantial economic effect on interstate commerce.

II. THE RATIONALE BEHIND THE GOVERNMENT'S BAN OF THE PRIVATE POSSESSION OF MACHINE- GUNS VIA THE COMMERCE CLAUSE ALSO SUPPORTS THE PROSCRIPTION OF HANDGUNS BY MEANS OF THE COMMERCE CLAUSE.

A) The judicial and legislative histories concerning machinegun possession establish a nexus between machinegun violence and interstate commerce.

Congress outlawed the transfer or possession of machineguns in section 922(o) of the Firearms Owners' Protection Act.[1] 18 U.S.C. § 922(o) (1988). Congress' ban on

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[1] The Full text of Section 922(o) reads:

(1) [I]t shall be unlawful for any person to transfer or possess a

the private possession of machineguns has received few judicial challenges. In fact, the Eleventh Circuit ruling in *Farmer v. Higgins*, 907 F.2d 1041 (11th Cir. 1990), extended the statute's application to the private possession of machineguns not lawfully possessed prior to the date of enactment. *Id.* at 1042. The Ninth Circuit decision in *United States v. Evans*, 928 F.2d 858 (9th Cir. 1991), added to the *Higgins* court's reading of section 922(o) by acknowledging the general nexus between firearms regulation and interstate commerce. The court noted the connection between the possession of firearms and the effect of such possession on the national economy. *Id.* at 862.

The court in *United States v. Hale*, 978 F.2d 1016 (8th Cir. 1992), combined the Eleventh and Ninth Circuits' rulings to decide that Congress can use the Commerce Clause to ban the private possession of machineguns. In so doing, the court looked to the legislative history of section 922(o), which indicated that "Congress considered the relationship between the availability of machineguns, violent crime, and narcotics trafficking."[2] After *Hale*, it was clear that the nexus linking machinegun possession and violence to interstate commerce had been endorsed congressionally and judicially.

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machinegun.

(2) This subsection does not apply with respect to-

(A) a transfer to or by, or possession or by authority of, the United States or any department or agency thereof or a State, or a department, agency, or political subdivision thereof; or

(B) any lawful transfer or lawful possession of a machinegun that was lawfully possessed before the date this subsection takes effect.

[2] *See* H.R. Rep. No. 495, 99th Cong., 2d Sess., at 1-5, *reprinted in* 1986 U.S.C.C.A.N. 1327, 1327-31.

B) The Fifth Circuit's failure to acknowledge a nexus between handgun possession and interstate commerce is based upon an erroneous distinction between machineguns and handguns.

Handguns and machineguns are often similar in their maximum magazine capacities, the speed of travel of their bullets, and the type of cartridges they use. Thus, if Congress has the power to regulate machineguns through the Commerce Clause, then that same power should exist for the regulation of handguns in schools. However, despite the two weapons' similarities, the Fifth Circuit in *Lopez* held that the possession of a .38 caliber handgun could not be regulated under the Commerce Clause, while endorsing the fact that machineguns can be subject to Commerce Clause regulation.

The *Lopez* court held that section 922(q) of the Act[3] does not establish a nexus between handgun possession in a school zone and interstate commerce. *Lopez*, 2 F.3d at 1368. The court distinguished section 922(q) from section 922(o) by stating, "Section 922(o) is restricted to a narrow class of highly destructive, sophisticated weapons. . . which is more suggestive of a nexus to or affect on interstate or foreign commerce than possession of any firearms whatever. . ." *Id.* at 1356.

By using this criteria to negate the extension of the commerce nexus from section 922(o) to section 922(q), the Fifth Circuit mistakenly implies that machineguns are more lethal weapons than handguns because of their "highly destructive" and "sophisticated" nature. While the two weapons may be technologically distinguishable, they both fire bullets at a similar speed and rate.

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[3] The Gun-Free School Zones Act of 1990, 18 U.S.C.A. § 922(q) (Supp. 1994).

Machineguns are different from handguns in that if the shooter pulls the trigger once, a machinegun will continue to fire its rounds as long as the trigger is compressed.[4] A semi-automatic pistol or revolver, both handguns, require the shooter to pull the trigger each time the shooter wants to fire, but does not require reloading or any other functions between trigger pulls.

Thus, the characteristic upon which the Fifth Circuit relies to keep handguns beyond the reach of the Commerce Clause essentially amounts to a slightly different rate of fire between the two guns. This slight technological distinction between the two guns should not divest Congress of the power to use the Commerce Clause to regulate the possession of handguns in a school zone.

For example, the Calico M-960A machinegun has the capacity to utilize magazines that can fire a maximum of 50 or 100 rounds. Jack Lewis, *Don't Rag the Calico*, GUN WORLD, March 1993, at 44, 46. The Calico Model 110, a handgun, utilizes 100 round rotary magazines. *1993 Gun World Annual Catalogs: Handguns*, GUN WORLD, September 1992, at 30, 32.

The similarities between handguns and machineguns are not limited to the Calico guns. The Heckler & Koch MP5 machinegun utlizes 9mm bullets. Jack Lewis, *A Family Affair in* GUN DIGEST BOOK OF ASSAULT WEAPONS 76, 80 (Jack Lewis ed., 1986). The Glock Pistol Model 17 handgun also uses 9mm bullets, in addition to its large magazine capacity of up to 19 rounds. 84 THE SHOOTER'S BIBLE 129 (William S. Jarrett ed., 1993).

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[4] The term "machinegun" means any weapon which shoots, is designed to shoot, or can be readily restored to shoot, automatically more than one shot, without manual reloading, by a single function of the trigger. The National Firearms Act, 26 U.S.C. § 5845(b) (1988).

The Viking machinegun has a magazine capacity of 36 rounds. Lewis, *supra* at 94. The Grendel Model P-30 handgun has a magazine capacity of 30 rounds. THE SHOOTER'S BIBLE, *supra* at 130. Lastly, the Daewoo K1A1 machinegun has a magazine capacity or either 20 or 30 rounds. Wiley Clapp, *Great To-Do with the Daewoo in* GUN DIGEST BOOK OF ASSAULT WEAPONS 82, 83 (Jack Lewis ed., 1986). The Lee Brown .38 TripleComp handgun has a maximum magazine capacity of 18 rounds. Paul Hantke, *The TripleComp*, GUN WORLD, August 1992, at 46.

These statistics indicate that machineguns are only incrementally more dangerous than handguns, for many handguns and machineguns utilize nearly the same magazine capacity. A machinegun is slightly more lethal because it requires only one compression of the trigger to fire all its bullets. However, the two guns carry nearly equal amounts of ammunition and have similar destructive capabilities, regardless of whether one gun requires separate trigger compressions for each discharge. Indeed, a .38 revolver will reload with each trigger pull and can rapidly fire its six rounds. If a nexus exists between machinegun possession and interstate commerce, then that nexus also should exist between handgun possession and interstate commerce. The *Lopez* court unwittingly based its distinction between machineguns and handguns on a slightly faster rate of fire. A machinegun that has a magazine capacity of 20 rounds is not more amenable to Commerce Clause regulation than a handgun that has a magazine capacity of 17 rounds. Congress, therefore, should have the power to ban handgun possession as defined by section 922(q) by means of the Commerce Clause.

CONCLUSION

For all of the above reasons, the Coalition to Stop Gun Violence, the Educational Fund to End Handgun Violence, and the Council of Great City Schools respectfully request that this Court reverse the Fifth Circuit's ruling and uphold the constitutionality of the Gun-Free School Zones Act of 1990.

Respectfully submitted,

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APPENDIX A

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RE: U.S. v. Alphonse Lopez, Jr.
Case No: 93-1260, cert. granted,
April 18, 1994 **Application for extension of time to file *amicus curiae* brief or motion for leave to file *amicus curiae* brief.**

Dear Clerk:

This firm represents the Coalition to Stop Gun Violence, an organization desiring to file an *amicus curiae* brief in this case. I request an extension of the time for filing either an *amicus curiae* brief (with written consent) or a motion for leave to file an *amicus curiae* brief until June 17, 1994.

The Coalition to Stop Gun Violence is a grass-roots organization formed in 1974 as a non-profit corporation. Because of its grass-roots composition, the coalition has had difficulty locating counsel. Benner & Bilicki was just retained today.

Because of the coalition's difficulty locating counsel, they have been unable to prepare a brief. I will be out of town this weekend for the Memorial Day holiday. Therefore, I respectfully request an extension of the filing deadlines. Moreover, because of the impending deadline (presently June 2, 1994), I request that this application be considered on an emergency basis.

Thank you.

Sincerely,

/S/

Brian J. Benner
Counsel of record for
the Coalition to Stop
Gun Violence

BJB/aa

cc: all counsel of record

APPENDIX B

SUPREME COURT OF THE UNITED STATES
OFFICE OF THE CLERK
WASHINGTON, D.C. 20543

WILLIAM K. SUTER
CLERK OF THE COURT

AREA CODE 202
479-3011

June 1, 1994

Brian J. Benner, Esq.
Benner and Bilicki
31700 Middlebelt Road, Suite 240
Farmington Hills, MI 48334

Re: 93-1260 - United States v. Alfonso Lopez, Jr.

Dear Mr. Benner:

This is to acknowledge receipt of your letter dated May 27, 1994, requesting an extension of time to file an amicus curiae brief in the above stated case.

An amicus curiae brief accompanied by written consent of all the parties may be file within the time allowed for the filing of the brief of the party supported. See Rule 37.3. When consent is refused, a motion for leave to file accompanied by the proposed amicus curiae brief may be presented within the time allowed for the filing of an amicus curiae brief with consent. See Rule 37.4. The Rules of this Court do not permit the filing of an application to extend the time for filing on behalf of an amicus curiae.

Very truly yours,

By

/S/
Sandy Nelsen
Assistant Clerk - Merits
(202) 479-3032

cc: Honorable Drew S. Days, III
John R. Carter, Esq.